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## *County of San Diego*

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# **Negotiated Work Plan**

## **Pesticide Regulation Program**

### **2011 & 2012**

## **Negotiated Work Plan Pesticide Regulation Program Calendar Years 2011 and 2012**

### **Program Resources**

#### **PROGRAM STAFF**

The San Diego County Pesticide Regulation Program (PRP) is comprised of thirteen full-time inspector positions. Two Supervising Inspectors and one Deputy Agricultural Commissioner oversee the program, and four clerks provide support. Due to the need for increased efficiency and succession planning, up to four inspectors participate in the Cross Program Inspector Pilot assisting the Plant Health and Pest Prevention Program's contractual workload. All permanent inspectors are licensed to perform pesticide inspections; nine are bilingual and four have more than 10 years of experience in pesticide regulation.

PRP staff is distributed primarily by geographic area, and also work on specific county-wide issues. All thirteen inspectors perform agricultural and structural inspections. In addition, the inspectors may also perform Agricultural Water Quality and Hazardous Materials inspections. Whenever possible, the inspectors combined these in a single visit, improving efficiency.

San Diego County deployed the Accela Business Case Management System (BCMS) in December 2009. This comprehensive web-based system provides an integrated approach to registration, inspection, investigation, compliance and enforcement for PRP and improves the regulatory coordination with Civil Actions, Plant Health and Pest Prevention (PHPP), and Organic Producers Programs. Inspectors are equipped with mobile computer tablets, portable printers and GPS units to conduct their work.

#### **COMMUNITY**

San Diego is a diverse community consisting of the sixth largest urban population of approximately three million, an international border with Mexico, military installations and a farming community of over 6,600 farms. San Diego ranks 9<sup>th</sup> in agricultural productivity in the State of California with an agricultural output value of \$1.55 billion, and agriculture is San Diego's 5<sup>th</sup> leading economic sector. Local growers produce over 200 agricultural commodities, including high value crops such as floricultural nursery products and avocados on land mostly interspersed with residential and other sensitive sites. San Diego has the largest community of organic growers in the state and nation.

Approximately from 28,000 to 34,000 farm workers are employed in San Diego during the height of the growing season. This work force is primarily employed directly by growers, but some workers are employed through the 28 registered Farm Labor Contractors working in the County. Farm worker housing is limited, contributing to pesticide regulation compliance concerns related to clean work clothing, showers and decontamination. Some farm workers occupy makeshift camps with limited resources, especially potable water and water for sanitation.

Most of San Diego's farms are small, family-owned operations with fewer than nine acres. On-farm employees handle most pest control decisions and applications. Pesticide applications generate calls and concerns from area residents, especially when aerial applications are conducted. The combination of agricultural/urban interface and overall population growth results in pesticide-related complaints by neighbors of farms, and neighbor versus neighbor complaints of misuse. These complaints in addition to the illness investigations forwarded from the Department of Pesticide Regulation (DPR) and the Poison Control Center, resulted in an average of 145 investigations by PRP staff in 2009 and 2010. Approximately 28% of these are related to pesticide injuries associated with antimicrobial use by hospitals, janitorial services and restaurants.

In addition to agricultural/urban interface issues, San Diego has a large structural pest control industry. More than 300 structural pest control companies are registered in the county. Of these, approximately 35 are registered to perform fumigations, and together they typically perform an average of 17,000 fumigations annually, depending on the economic factors. San Diego also has a significant landscape maintenance industry with approximately 100 registered Maintenance Gardeners. These two industries account for the majority of urban pesticide applications, other than applications by homeowners.

## **Restricted Materials Permitting**

### **PERMIT-EVALUATION**

Over the last several years, the number of restricted materials permits issued in San Diego County has declined from approximately 1000 to 225. The majority of this reduction is believed to be the result of fewer requests to apply abamectin aerially to avocados. Abamectin is not a California Restricted Material; however, the commissioner requires a non-restricted permit for aerial use of this pesticide. In addition, recent fires, drought, freezes, and economic slowdown are believed to be contributing to the reduction. In 2009 and 2010, approximately half of permits were agricultural and half were non-agricultural. The majority of permits are issued for only one to three chemicals.

San Diego staff has reduced the number of chemicals per permit over the last 10 years by reviewing permits annually and by discussing with growers about their need for certain pesticides and consideration of possible alternatives to reduce the use of restricted materials. This interaction, combined with the availability of lower toxicity pesticides, has led to an overall decrease in the number of restricted materials used.

Due to the continued urbanization of San Diego County, the permits that are issued need to accurately reflect sensitive sites (surrounding homes, businesses, schools, playgrounds, hospitals, waterways or habitats) that could potentially be affected by the applications. Therefore, permits are evaluated only after direct observation of the site.

### **SPECIFIC PERMIT ISSUES**

The new California Agricultural Permit System (CAPS) will be replacing the Restricted Materials Management System (RMMS). The CAPS is scheduled to be implemented in San Diego County by the end of 2011. The County plans to have Accela BCMS interface with this system.

Permit conditions include: restrictions on wind velocity, acreage/area, and number of applications; and requirements for field posting, treatment and aeration buffer zones, accident response plans, and recordkeeping. Permit mitigation is conducted on a site-by-site basis. Field fumigant use is limited to North County row crop operations and smaller (measured by square feet) applications for soil fumigation in ornamental plant production. The eventual phase-out of Methyl Bromide has led to the use of alternative materials such as Telone, In Line, Metam Sodium, and Chloropicrin. With the recent registration of Methyl Iodide, there is a possibility a few growers may request permits.

The Commissioner requires a permit for the use of abamectin applied aerially. In San Diego County, the use of abamectin by aerial application has required a permit in consideration of local conditions and undue hazards since 2005. Growers use this pesticide to control thrips in avocado groves, which have steep terrain requiring aerial application. Prior to 2005, abamectin was a restricted use material that was applied under a Section 18 label. In 2006, abamectin was labeled for use on avocado, but remained a federally restricted material. Complaints and drift concerns led the Commissioner to retain the permit requirement for aerially-applied abamectin applications indefinitely. The Notice of Intent requirement for abamectin is very helpful to the Commissioner's office to quickly identify the application sites that are near sensitive sites or areas prone to complaints and contact the responsible pesticide applicators when drift complaints are received. The close proximity of homes and schools to many avocado groves and the placement of many homes inside groves leads to several complaints every year. In addition, pesticide residual toxicity relating to bees is a major concern, which was addressed in the *Bee Protection Practices Agreement* developed by the San Diego Bee Protection Stakeholder Advisory in 2009.



All too frequently, invasive pest infestations result in quarantines that require the use of restricted materials to treat quarantine commodities prior to movement. When this occurs, PRP works with PHPP and CDFA to provide accurate pesticide safety information to affected growers.

## **SITE MONITORING**

San Diego County currently conducts pre-application site inspections on five percent of Notices of Intent (NOIs) per Title 3 of California Code of Regulations section 6436. To address areas with potentially greater hazards and/or a greater potential for complaints, priority will be given to inspecting areas where field fumigation or aerial applications will be conducted. Priority will also be given to applications at sensitive sites.

### **Goals**

Ensure that at least five percent of NOIs for restricted materials are reviewed prior to application to determine compliance with permit requirements.

Ensure that for all restricted material permits issued to persons other than the property operator, a letter from the property operator is on file authorizing the permit to be signed by the non-operator.

### **Deliverables**

1. Conduct presite monitoring of at least 5% of total NOIs received, with emphasis placed on fumigation, aerial and sensitive site applications.
2. Conduct site monitoring of all non-ag Restricted Materials Permittees at least once a year.

### **Measures**

Pre-application site inspections enable County personnel to monitor the site at which a restricted material will be used for any changes that may have occurred since the permit was issued. Pre-application site inspections also provide an opportunity to confirm that permit conditions are being followed. In choosing to give emphasis to aerial applications, fumigations and sensitive sites, the County is focusing available resources on applications with the highest potential for non-compliance and potential complaints from area residents.

## **Compliance Monitoring**

The County of San Diego conducts approximately 1,000 pesticide inspections per year. This number may need adjustment during the year depending on the number of complaints and illness investigations received due to external factors such as quarantines, workload priorities, funding reduction and emergency projects. Every attempt is made to balance the workload so that both structural and agricultural concerns are met.

San Diego County has been participating in the Structural Fumigation Enforcement Program (SFEP) since January 2009. This program requires structural fumigators to pay a \$5 fee per completed fumigation to the County Agricultural Commissioner, who must use these funds to increase structural fumigation inspections, undercover surveillance, and enforcement activities. The program was first initiated by industry in the mid-1990s in response to a need for increased regulatory oversight. The chaptered AB 1736 reauthorized the SFEP from January 1, 2011 to January 1, 2014.

The County strives to maximize the available regulatory oversight resources. With limited resources available, it is necessary to distribute those resources to provide the most effective compliance monitoring possible. PRP inspects 2% of the number of completed fumigations to be in compliance with the SFEP. In 2009 and 2010, an average of 450 structural fumigations was done, constituting a 2.7% inspection rate. Undercover inspections are planned for numerous fumigation companies operating in San Diego County with highest priority given to companies with noncompliance history. The SFEP supports an ongoing compliance issue: Branch 1 companies conduct fumigations correctly when monitored, but sometimes fail to follow regulations in the perceived absence of regulatory oversight.

The new California Aeration Plan (CAP) was implemented in November 2010 and replaced the Tarpaulin Removal Aeration Plan (TRAP). CAP is an improved aeration process, which provides better protection for the pesticide workers and a safer reentry environment for homeowners. This process may reduce the number of violations relating to SCBA requirements.

## **INSPECTIONS**

Inspections will focus on:

- applications using more toxic formulations, fumigants, and restricted materials,
- sensitive sites/surrounding areas and applications where there is a greater potential for worker and public exposure and environmental impact,
- unlicensed/unregistered companies and individuals,
- companies and individuals with poor compliance history
- applications that have historically resulted in complaints
- more problematic methods of application (aerial, fumigation and power spraying),
- number of employees engaged in pesticide work activities (handlers and field workers).

Inspectors will record their findings in the "as found condition." All non-compliances will receive appropriate compliance or enforcement actions as required by the Enforcement

Response Regulation (violation notice, warning letter, civil penalty, or referral to the district attorney, city attorney or state agencies).

**Goal**

Maintain an effective pesticide monitoring system to assure safe use of pesticides in all areas of San Diego County.

**Deliverables**

1. Conduct approximately 1000 inspections annually with growers, pest control businesses, field worker, pesticide dealers and pest control advisors.
2. Inspect 2% of Branch 1 fumigations (approximately 340 inspections) to reflect continued regulatory focus. Fumigation inspections may include undercover inspections with priority given to companies with noncompliant history. Conduct Branch 2 (general pest) and Branch 3 (wood-destroying pest or organisms) inspections. Priorities will be fumigation inspections and other applications using a Category 1 (highest toxicity) pesticide.
3. Monitor pesticide applications that have historically received or may receive public complaint. In San Diego County, the Vector Control District is utilizing larvicides to reduce mosquito populations to prevent outbreaks of West Nile Virus (WNV). These applications are conducted by helicopter to standing water in residential and urban areas throughout the County. These high visibility applications have resulted in complaints. Aerial applications of abamectin to control thrips on avocado also tend to trigger public complaints. PRP staff will monitor at least 1% of all these applications in San Diego County to assure public health and safety.
4. Conduct compliance monitoring for commodity fumigations.
5. Inspect all non-ag Restricted Materials Permittees at least once a year.
6. Assign workload goals to inspectors based on area characteristics such as numbers of permits, types of permits, and number of operators. Assign inspection goals to each pesticide inspector to assure attainment of the county's strategic initiatives for a safe and livable community and protection of the environment.
7. Supervisors to evaluate inspectors in the field at least once a month to ensure appropriate procedures are followed.
8. DPR Enforcement Branch Liaison also provides oversight inspections twice a month with different inspectors to ensure that inspections are conducted according to DPR's standards and guidance.



**Measures**

Inspections identify areas of non-compliance that need corrective actions. These activities also serve as a method of obtaining feedback for County staff. The measure of success would be a regulated community that is:

- knowledgeable about pesticide laws and regulations;
- aware that these laws and regulations are intended to protect the public, workers and the environment
- willing to report violations or complaints; and
- informed about how to make a pesticide-related complaint.

**INVESTIGATION RESPONSE AND REPORTING**

Approximately 145 investigation reports are completed annually including "public reports" documenting complaints from the public, mostly by telephone. The majority of complaint investigations relate to agricultural/urban interface or neighbor-versus-neighbor conflicts concerning pesticide use. Illness reports received from DPR and Center of Poison Control are often related to the use of antimicrobial products (disinfectants and sanitizers).

**Goals**

1. Produce quality investigative reports that meet State guidelines for timely submission.
2. Respond to public complaints of pesticide misuse in a timely manner.
3. Investigate all complaints of pesticide exposure, whether reported to this office directly or brought to this office's attention through other means, such as public complaints, San Diego County Department of Environmental Health Hazardous Materials Division's weekly incident reports, or media reports.

**Deliverables**

1. Ensure priority investigations receive focused attention and are done according to procedure and time frame.
2. Maintain timely response and submission of investigative reports. Reports will meet State guidelines for submission, or reasons why the guideline cannot be met will be documented and provided.
3. Continue to follow state guidelines for format and content, as found in the Investigative Procedures Manual. Continue to develop and utilize a referral list to other agencies for common complaints that are not within the jurisdiction of the County Agricultural Commissioner.



**Measures**

Pesticide investigations are important in determining whether a pesticide use activity is in compliance with all pesticide laws and regulations, and in providing information to DPR on labeling issues, reentry intervals, rates of pesticide use, etc. In order for DPR to make exposure determinations,

- Investigations must provide enough information for the reviewer to identify where problems may be recurring.
- Investigations are conducted promptly, submitted timely.
- The finished reports are complete, including labels, violations found, exposure information, and appropriate enforcement action.
- Attempts to obtain medical records releases and medical records for all illness investigations, and documenting these attempts in the report.
- The County encourages reporting and responds to all complaints received.

**Enforcement Response**

All non-compliances noted when conducting inspections or investigations are recorded in the "as found" condition. The inspection form with the appropriate notation serves as the violation notice. Separate violation notices are issued for Cease and Desist Orders and violations found as the result of investigations.

Under Food and Agricultural Code Section 12999.5, the Commissioner is identified as the sole issuing authority for agricultural civil penalty actions. Business and Professions Code 8617 also authorizes the Commissioner to propose structural civil penalties. Violations are classified according to the Food and Agricultural Code, Business and Professions Code, and Titles 3 and 16 of the California Code of Regulations.

In 2006, the County re-engineered its handling of civil penalty actions. By November 2007, the average time from the issuance of a Notice of Violation (NOV) to the issuance of a Notice of Proposed Action (NOPA) was reduced from 180 days to less than 60 days. The average days for all structural and agricultural NOPAs now fluctuates between 50 to 60 days.

The County has provided evidence to the District Attorney's Office and Structural Pest Control Board to prosecute unlicensed and noncompliant companies and will continue to exercise this enforcement option reserved for the most noncompliant companies or most egregious violations affecting the health and safety of the public and the environment.

In calendar year 2009, PRP levied approximately 87 adjudicated civil penalties. One unlicensed pest control company was referred to the District Attorney's Office, resulting in a guilty plea and three year probation.

In calendar year 2010, PRP levied approximately 60 adjudicated civil penalties. One noncompliant pest control company was referred to the Structural Pest Control Board, resulting in license revocation and three year probation.

**Goal**

Following the provisions of the Enforcement Response Regulation, process NOPAs within 60 days of the violation notice. NOPAs continue to be one of the top priorities, second only to priority investigations and triage of illness investigations and complaints.

**Deliverables**

1. Take appropriate enforcement actions with documented consideration of the individual circumstances of each case within applicable statutes of limitation.
2. Conduct follow-up inspections to improve compliance.
3. Use Accela BCMS and the Enforcement Response Determination (ERD) databases to provide an overall compliance history for individuals and businesses.
4. Continue to refine in-house procedures for handling enforcement actions within the resources of the department, preparing evidence packets, and identifying responsible parties.
5. NOPAs for violations categorized as "Class A" or "Serious" may be sent via fax or e-mail to the DPR Enforcement Branch Liaison for review prior to being signed by the Commissioner.
6. Notify the DPR Enforcement Branch Liaison of all ACP/SCP hearings requested, in a timely manner.
7. Notify the DPR Enforcement Branch Liaison of any enforcement cases referred to agencies such as the Structural Pest Control Board for licensing action or to the city/district attorney for prosecution, etc., in a timely manner.

**Measures**

Enforcement actions are utilized by the County Agricultural Commissioner to promote compliance with pesticide laws and regulations.

- The Commissioner selects the appropriate level of enforcement action required to achieve regulatory compliance.
- Improve the compliance level of the individual or company

- Improve the overall compliance with individual law or regulatory sections.
- The Accela BCMS and Enforcement Response Determination (ERD) databases are used to analyze the compliance/non-compliance found during inspections and investigations.
- Improve tracking of non-compliances by individuals, businesses, and/or law or regulation section number.

## **OUTREACH**

Outreach to the regulated community provides a proactive method of providing information about requirements to growers, applicators, fieldworkers, structural companies and agricultural pest control businesses.

### **Compliance Assistance:**

1. Provide speakers for approximately 10 outreach events (CAPCA, PAPA, Target, etc.) annually.
2. Conduct two field worker training sessions in Spanish utilizing bilingual staff annually.
3. Submit at least one article addressing compliance issues or regulatory updates, such as "How to Meet Assure," to professional trade journals or other publications annually.
4. Include compliance information on various topics in the "New Year Letters" mailed each December to growers, pest control businesses, pest control advisors, and pesticide dealers.
5. Provide compliance assistance to individuals and groups making quarantine compliance treatments. During eradication projects, attend public meetings to provide factual information about pesticide application requirements as needed.

### **Measures**

- Improve the consistent understanding of the program by the regulated community
- Improve regulatory compliance by the regulated community

## **Work Plan Duration**

San Diego County will revise its work plan biennially.

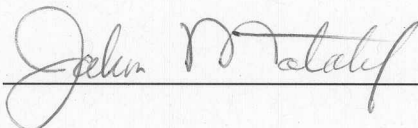


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2011 & 2012**

**Department of Pesticide Regulation &  
San Diego Department of Agriculture, Weights & Measures**

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